

JYLANA D. COLLINS (SBN: 107949)
VERONICA Y. FAUNTLEROY (SBN: 111506)
CRAIG S. SPENCER (SBN: 78277)
East Bay Municipal Utility District
375 Eleventh Street, P.O. Box 24055
Oakland, CA 94607-4240
Telephone: (510) 287-0174
Facsimile: (510) 287-0162

BRIAN S. HAUGHTON (SBN: 111709)
DONALD E. SOBELMAN (SBN: 184028)
KATHRYN L. OEHLISCHLAGER (SBN: 226817)
Barg Coffin Lewis & Trapp, LLP
350 California Street, 22nd Floor
San Francisco, California 94104-1435
Telephone: (415) 228-5400
Facsimile: (415) 228-5450

Attorneys for Defendant East Bay
Municipal Utility District

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and PEOPLE
OF THE STATE OF CALIFORNIA *ex rel.*
CALIFORNIA STATE WATER RESOURCES
CONTROL BOARD and CALIFORNIA
REGIONAL WATER QUALITY CONTROL
BOARD, SAN FRANCISCO BAY REGION,

Plaintiffs,

v.

EAST BAY MUNICIPAL UTILITY DISTRICT,

Defendant.

Case No. CV 09-00186 RS

**JOINT CASE MANAGEMENT
CONFERENCE REPORT**

Complaint Filed: January 15, 2009

Honorable Richard Seeborg

Plaintiffs the United States and the State of California; Intervenor plaintiffs, San Francisco Baykeeper and Our Children's Earth Foundation; and defendant, East Bay Municipal Utility District (EBMUD) (collectively, the "Parties"), submit this Joint Case Management Conference Statement pursuant to the Court's March 18, 2010 Reassignment Order.

1. **Date case was filed:** January 15, 2009.

2. **List or description of all parties:** Plaintiffs – the United States of America (“United States”), on behalf of the United State Environmental Protection Agency (“EPA”), and People of the State of California ex rel. California State Water Resources Control Board (“State Water Board”) and California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Water Board”) – are acting in their capacities as water quality regulators under the Clean Water Act (“CWA,” 33 USC §§1251 et seq.) and the California Porter-Cologne Water Quality Control Act (“Porter-Cologne,” Cal. Water Code §§13000 et seq.). Intervenor plaintiffs – San Francisco Baykeeper and Our Children’s Earth Foundation – are non-governmental organizations that have intervened under the CWA’s citizen intervention provision, CWA §505(b)(1)(B) [33 USC §1365(b)(1)(B)]. Defendant EBMUD receives wastewater from seven East Bay wastewater collection agencies (“Satellites”) serving a total population of approximately 650,000. Each Satellite owns and operates its own wastewater collection system, which delivers wastewater to EBMUD’s interceptor system. The interceptor system transports wastewater to EBMUD’s year-round main wastewater treatment plant near the eastern anchorage of the Bay Bridge and, during severe wet weather events, to EBMUD’s three wet weather facilities (“WWFs”).

3. **Summary of all claims, counter-claims, cross-claims, third party claims:** Plaintiffs claim EBMUD has violated provisions of the National Pollutant Discharge Elimination System (“NPDES”) Permits – issued by the Regional Water Board pursuant to the CWA and Porter-Cologne – governing discharges from EBMUD’s main treatment plant and the WWFs to San Francisco Bay.

4. **Brief description of the event underlying the action:** Inflow and infiltration of stormwater into the collection systems and private sewer laterals during severe wet weather events – via mis-connections, cracks and other imperfections in system pipes, joints and manholes – can lead to a 10-fold increase in the volume of wastewater flows, overwhelming the system. The regulatory solution to the problem – reached in the 1980s – was to require EBMUD and the Satellites to make hundreds of millions of dollars worth of improvements to their respective systems. EBMUD’s improvements included construction of the WWFs. Years after

the WWFs were built, there was a change in regulatory policy, and, as a result, on January 14, 2009, the Regional Water Board issued a new NPDES permit for the WWFs, prohibiting any further discharge from them to the Bay. Because it was not immediately feasible for EBMUD to comply with this permit, Plaintiffs filed this enforcement action on January 15, 2009. At the same time, the Plaintiffs and Defendant filed a Stipulated Order for Preliminary Relief (“SO”), which, after an opportunity for public comment, the Court signed on July 22, 2009. The SO requires EBMUD to take various actions designed to (1) immediately ameliorate the problem and (2) gather the information needed to support final relief eventually ending the problem permanently. On August 17, 2009, the Court issued an order staying the case except for semi-annual joint status reports on EBMUD’s progress in performing the actions required under the SO (the next report is due July 15, 2010).

5. Description of relief sought and damages claimed with an explanation as to how damages are computed: The relief sought is to bring the WWFs into compliance with the permit condition prohibiting any further discharge from them. See response to item 4, above.

6. Status of discovery (including any limits or cutoff dates): No discovery has been taken, nor is any currently contemplated.

7. Procedural history of the case including previous motions decided and/or submitted, ADR proceedings or settlement conferences scheduled or concluded, appellate proceedings pending or concluded, and any previous referral to a magistrate judge: See response to item 4, above.

8. Other deadlines in place (before reassignment), including those for dispositive motions, pretrial conferences, and trials: None other than the semi-annual joint status report requirement referenced in response to item 4, above.

9. Any requested modification of these dates and reason for the request: None.

10. Whether the parties will consent to a magistrate judge for trial: The Parties do not currently anticipate a need for trial. If that changes, the Parties will notify the Court.

11. Whether Judge Seeborg has previously conducted a settlement conference in this case, and if so, whether the parties stipulate to him handling this case for trial pursuant

1 to ADR Local Rule 7-2 or request his recusal: No.

2 12. If there exists an immediate need for a case management conference to be
3 scheduled in the action: No.

4 Dated: April 2, 2010

JOSEPH P. RUSSONIELLO
CHARLES MICHAEL O'CONNOR
United States Attorney's Office
Northern District of California

7
8 By: _____/s/
PATRICIA L. HURST
9 Attorneys for Plaintiff United States of America

10 Dated: April 2, 2010

EDMUND G. BROWN, JR.
Attorney General of the State of California

12
13 By: _____/s/
14 JOHN DAVIDSON
15 Attorneys for Plaintiff State of California

16
17 Dated: April 2, 2010

CHRISTOPHER A. SPROUL
Environmental Advocates

19
20 By: _____/s/
CHRISTOPHER A. SPROUL
21 Attorneys for San Francisco Baykeeper and
Our Children's Earth Foundation

22
23 Dated: April 2, 2010

BRIAN S. HAUGHTON
DONALD E. SOBELMAN
KATHRYN L. OEHLISCHLAGER
BARG COFFIN LEWIS & TRAPP, LLP

25
26 By: _____/s/
BRIAN S. HAUGHTON
27 Attorneys for Defendant East Bay Municipal Utility District
28

PROOF OF SERVICE BY ELECTRONIC FILING/SERVICE

I, Joan F. Flaherty, declare that I am over the age of eighteen years and not a party to this action. I am an employee of Barg Coffin Lewis & Trapp, LLP ("the Firm") and my business address is 350 California Street, 22nd Floor, San Francisco, California 94104-1435.

On April 2, 2010, I served the following document(s) in this cause:

JOINT STATUS REPORT

I caused said document(s) to be Electronically Filed and Served through the CourtLink system for the above-entitled case to those parties on the Service List maintained on Courtlink's Website for this case. The file transmission was reported as complete and a copy of the "JusticeLink Filing Receipt" page will be maintained with the original document(s) in our office.

John Davidson
Office of the Attorney General
State of California
455 Golden Gate Ave #11000
San Francisco, CA 94102-3664
email: john.davidson@doj.ca.gov

Patricia L. Hurst
United States Attorney's Office
Northern District of California
450 Golden Gate Ave Ste 5209
San Francisco, CA 94102
email: patricia.hurst@usdoj.gov

Christopher B. Sproul
Environmental Advocates
5135 Anza Street
San Francisco, CA 94121
email: csproul@enviroadvocates.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 2, 2010, at San Francisco, California.

/s/

Joan F. Flaherty